

**Supplemental Letter of Findings: 01-20170745
Individual Income Tax
For the Year 2012**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issue. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Supplemental Letter of Findings.

HOLDING

After moving from Indiana to Pennsylvania for one year and then returning to Indiana, the Department was unable to agree that Individual was not an Indiana resident during 2012; Individual failed to establish that he intended to abandon his Indiana residence and establish a residence in Pennsylvania.

ISSUE

I. Individual Income Tax - Indiana Residency.

Authority: IC § 6-3-2-1(a); IC § 6-3-1-12; IC § 6-3-3-3; IC § 6-8.1-5-1(c); Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); State Election Board v. Bayh, 521 N.E.2d 1313 (Ind. 1988); In the Matter of Evrard, 333 N.E.2d 765 (Ind. 1975); Board of Medical Registration and Examination v. Turner, 168 N.E.2d 193 (Ind. 1960); Croop v. Walton, 157 N.E. 275 (Ind. 1927); Culbertson v. Bd. Of Comm'rs of Floyd County, 52 Ind. 361 (1876); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-22](#).

Taxpayer argues that he was not an Indiana resident during 2012 and that the Department's previous decision to the contrary was erroneous.

STATEMENT OF FACTS

Taxpayer is a current Indiana resident. The Indiana Department of Revenue ("Department") issued Taxpayer a notice indicating that it had "determined you have unreported income for tax year 2012." The Department wrote that Taxpayer was required to either file an Indiana return or "explain why you were not required to file a 2012 Indiana income return" and to "provide supporting documentation with that explanation."

Taxpayer responded by sending the Department a copy of his Pennsylvania driver's license issued June 2012. The Department responded in writing stating that it needed "additional supporting documents proving 2012 residency" The Department requested "acceptable supporting documents" such as a Pennsylvania property tax receipt, full-year lease agreement, voter's registration, or utility bill.

The matter went unresolved, the Department issued Taxpayer a notice of "proposed assessment," and Taxpayer submitted a protest challenging the assessment. An administrative hearing was scheduled in order to provide Taxpayer an opportunity to explain the basis for the protest.

I. Individual Income Tax - Indiana Residency.

DISCUSSION

The issue - as in his original protest - is whether Taxpayer established that he was not a full-year resident of Indiana during 2012.

Although a past and current Indiana resident, Taxpayer argues that he established a Pennsylvania residence during 2012 and - as a result - was not required to file a 2012 Indiana income tax return.

To that end, Taxpayer has provided a copy of his Pennsylvania driver's license, a copy of his Pennsylvania voter's registration, a copy of his 2012 federal income tax return (which provided a Pennsylvania address), a copy of his 2012 Pennsylvania income tax return, a W-2 form issued by his Pennsylvania employer, a letter from his Pennsylvania landlord indicating that Taxpayer resided in one of the landlord's apartments from September 4, 2011, to September 30, 2012, and Pennsylvania utility bills up to and including October 2012.

Taxpayer owned an Indiana home before he moved to Pennsylvania in 2012. He retained ownership of the home while in Pennsylvania and lived in that home after moving back to Indiana. During 2012, Taxpayer claimed the Indiana homestead exemption on the property. However, Taxpayer explains that he retroactively attempted to revoke the 2012 credit but the county taxing authority did not permit him to do so. In addition, Taxpayer claims that he originally investigated the possibility of selling the Indiana home but - because of the sizable mortgage he held on the property - was unable to do so.

All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and each taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). In reviewing a taxpayer's argument, the Indiana Supreme Court has held, that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes an income tax on "the adjusted gross income of every resident person" IC § 6-3-2-1(a). For income tax purposes, "The term 'resident' includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state" IC § 6-3-1-12.

For income tax purposes, "a person has only one domicile at a given time even though that person maintains more than one residence at that time." *Id.* Additionally, "Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur." *Id.* "To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely." *Croop v. Walton*, 157 N.E. 275, 278 (Ind. 1927). To establish a domicile, a taxpayer "must be physically present at a place, and must have the simultaneous intent of establishing a home at that place." [45 IAC 3.1-1-22](#).

In *State Election Board v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court considered the standard by which a "domicile" is established. The court determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. Specifically, the court stated, in relevant part, that:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and . . . he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile." A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence. *Id.* 1317 (Internal citations omitted).

The court concluded that:

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile. *Id.* at 1318 (Internal citations omitted).

In an earlier case, the Indiana Supreme Court stated that in order to establish a new residence, a taxpayer "must show . . . evidence of acts undertaken in furtherance of the requisite intent, which make that intent manifest and

believable." In the Matter of Evrard, 333 N.E.2d 765, 768 (Ind. 1975).

The Department's regulation provides that "[t]here is no one set of standards that will accurately indicate the person's intent in every relocation." [45 IAC 3.1-1-22](#). Instead, the determination is made on a case by case basis. Id. Facts to be considered include:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile. Id.

In addition, courts have considered a taxpayer's contemporaneous declarations identifying that taxpayer's "home;" insurance policies, mortgages, contracts or other instruments indicating the taxpayer's home; and membership in clubs, churches, or other social groups in a place. Croop, 157 N.E. at 278-79. Finally, courts have considered the location of taxpayer's household goods and mailing address. Board of Medical Registration and Examination v. Turner, 168 N.E.2d 193, 197 (Ind. 1960); See also, Culbertson v. Bd. Of Comm'rs of Floyd County, 52 Ind. 361 (1876). However, a taxpayer "seeking to establish his claim of exemption from taxation on the ground of nonresidence is not required to show that his property was assessed elsewhere." Croop, 157 N.E. at 276.

The Department is aware that there is no one set of standards that will accurately indicate the person's intent in every relocation. In addition, the Department readily concedes that the facts and circumstances presented here are either ambiguous or incomplete. However, especially given the fact that the Taxpayer has the statutory burden of establishing that the assessment was "wrong," the Department is unable to agree that Taxpayer has unambiguously established that he intended to "abandon" his Indiana residency with the intention of establishing a new Pennsylvania residence. Taxpayer was an Indiana resident prior to 2012 because he was domiciled in Indiana. Therefore Taxpayer is required to establish that he abandoned Indiana when he moved to Pennsylvania in 2012. Taxpayer provided evidence of "conduct" in moving to Pennsylvania but given the relatively brief time he lived there while continuing to claim the homestead credit on his previous and future home, Taxpayer's "intent" is unclear. Bayh, 521 N.E.2d at 1318.

Taxpayer is, of course, entitled under IC § 6-3-3-3 to claim a credit on his 2012 Indiana return for taxes paid to Pennsylvania but given the decision here, Taxpayer is required to file an Indiana resident return for 2012.

FINDING

Taxpayer's protest is respectfully denied.

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